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Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations: financing of the United Nations peacekeeping operations

Instances for which the United Nations is entitled to restitution as the result of non-compliance with status-of-forces or other agreements

Report of the Secretary-General

Summary

The present report is being submitted pursuant to the request made by the Advisory Committee on Administrative and Budgetary Questions in paragraph 11 of its report on the financing of the United Nations Protection Force, the United Nations Confidence Restoration Operation in Croatia, the United Nations Preventive Deployment Force and the United Nations Peace Forces headquarters (A/51/491), that it be provided with a compendium of all instances where the United Nations is entitled to restitution as the result of non-compliance with status-of-forces or other agreements.

Contents

		Paragraphs	Page
I.	Introduction	1–2	2
II.	Criteria for assessment of violation of status-of-forces or status-of-mission agreements	3–5	2
III.	Host country non-compliance with status-of-forces or status-of-mission agreements	6–11	3
IV.	Action to be taken by the General Assembly	12	6

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I. Introduction

1. Following the request made by the Advisory Committee on Administrative and Budgetary Questions in its report (A/51/491), the Secretariat has reviewed all instances of non-compliance with status-of-forces or other agreements[1] with a view to developing a compendium covering the period from January 1993 to 31 August 2001. In order to undertake this task, the Secretariat identified those provisions in the status-of-forces or other agreements relating to obligations of host countries and concessions granted to United Nations peacekeeping operations which, as a result of host countries' non-compliance, have resulted in the Organization incurring unforeseen financial costs.

2. The Secretariat regrets the late submission of the present report to Member States and would like to inform them that it has followed up and is continuing to follow up with those host countries whose non-compliance with status-of-forces or other agreements has resulted in expenditures for the United Nations for which it is entitled to be restituted.

II. Criteria for assessment of violation of status-of-forces or status-of-mission agreements

3. Although an all-embracing definition of what constitutes a violation of a status-of-forces or status-of-mission agreement by a host country is difficult to formulate, for purposes of the present report, it can be qualified in general terms, as non-compliance with the terms and conditions of the agreement by the host country, as a result of which the Organization incurs costs or financial obligations for which there may not have been a budgetary provision and which, otherwise, it was under no legal obligation to incur, in order to enable the mission to continue to function.

4. A set of criteria was developed which define cases or instances which are considered to be genuine status-of-forces or other agreements violations and for which the Organization is therefore due restitution. In carrying out this exercise, each peacekeeping mission was requested to review any such instances of charges made for items that should have been provided without cost, according to signed status-of-forces or other agreements between the United Nations and host countries, from January 1993 to August 2001, and to submit a detailed description with regard to each violation, including the financial liabilities incurred by the mission as a result.

5. The costs and financial obligations incurred by the Organization owing to non-compliance with status-of-forces or other agreements by countries hosting peacekeeping operations include the following:

(a) Payments of duties, tolls, fees and other charges related to usage for official purposes of roads, bridges, waterways, railroads, port facilities and airfields, except in the case of charges for services rendered;

[1] The term "other agreements" should be understood to include the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946 (resolution 22A (I)). In cases where status-of-forces or status-of-mission agreements have been concluded or where the model status-of-forces agreement (A/45/594, annex) is applicable, such agreements make specific provision for the application of the Convention.

(b) Payment of taxes, including sales taxes, duties and other indirect taxes such as value-added taxes (para. 9 refers), on the import or re-export of equipment, provisions, supplies and other goods which are for the exclusive and official use of United Nations peacekeeping operations, or for resale in the commissaries;

(c) Payment of rent in cases where premises necessary for the conduct of the operational and administrative activities of the United Nations peacekeeping operation and for the accommodation of United Nations personnel are provided by the host Government, which should be provided free of cost to the United Nations, where premises are available but the host Government does not provide them for the exclusive use of the United Nations;

(d) In the case that utilities cannot be provided free of charge to the United Nations and excess payment made above the most favourable rate or the terms agreed to with the competent authorities is required and for which the host Government does not provide restitution in case of payment;

(e) Payment by the United Nations of charges for host government issuance of visas, licences, permits or certificates for the operation of vehicles, aircraft or vessels and the practice of any profession or occupation, and the right to carry or use firearms or ammunition in connection with the functioning of the United Nations peacekeeping operation;

(f) Payment by the United Nations of any charges for the validation of licences and certificates already issued by appropriate authorities in other States in respect of aircraft and vessels;

(g) Purchases made by the United Nations for official use, on which duties and taxes have been charged or are chargeable and for which appropriate administrative arrangements for remission or return have not been made (payment of taxes, duties or other charges on the provision of host governments' telecommunications services above the most favourable rate with respect to the use of local telegraph, telex and telephone system);

(h) Payment of taxes, duties or other charges as a result of procurement of goods and services in connection with the functioning of a United Nations peacekeeping operation, levied by a third country, signatory of the Convention on Privileges and Immunities of the United Nations.

III. Host country non-compliance with status-of-forces or status-of-mission agreements

6. For the purpose of this reporting exercise, data was collected from all peacekeeping missions covering the period from January 1993 to August 2001. Violations of status-of-forces or other agreements were found to have been committed in 13 different peacekeeping missions: the United Nations Mission in the Central African Republic (MINURCA), the United Nations Mission for the Referendum in Western Sahara (MINURSO), the United Nations Mission in Angola (MONUA), the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), the United Nations Mission in Sierra Leone (UNAMSIL), the United Nations Mission in Ethiopia and Eritrea (UNMEE), the United Nations Military Observer Group in India and Pakistan (UNMOGIP), the United Nations

Mission of Observers in Tajikistan (UNMOT), the United Nations Truce Supervision Organization (UNTSO) and the United Nations Peace Forces headquarters (the combined Forces) (UNPF). Table 1 provides data on the types and amounts of expenditures incurred by the Organization's peacekeeping missions as a result of host Governments not providing the prescribed facilities or services and not granting missions exemption from payment.

Table 1
Total costs incurred as a result of non-compliance with status-of-forces or other agreements, by type of expenditure
(Thousands of United States dollars)

Mission	*Rental of premises*	*Port charges*	*Airport charges*	*Road tolls*	*Petroleum taxes*	*Communications taxes*	*Value-added taxes*	*Total by mission*
MINURCA	502.2	-	-	-	-	-	-	502.2
MINURSO	200.0	-	-	-	-	-	-	200.0
MONUA	12 853.0	670.1	-	-	-	-	-	13 523.1
MONUC	1 415.2	-	-	-	83.9	-	-	1 499.1
UNAMSIL	528.8	-	131.1	-	-	-	-	659.9
UNMEE	236.6	-	-	-	-	-	-	236.6
UNMOGIP[a]	-	59.3	-	-	60.1	-	-	119.4
UNMOT	116.8	-	-	-	-	-	24.9	141.7
UNTSO	72.0	-	-	-	-	-	36.0	108.0
Subtotal	**15 924.6**	**729.4**	**131.1**	**-**	**144.0**	**-**	**60.9**	**16 990.0**
UNPF								
Republic of Croatia	49 138.3	-	5 294.6	191.1	37 359.5	679.0	-	92 662.5
Former Yugoslav Republic of Macedonia	110.4	-	-	-	-	-	-	110.4
Federal Republic of Yugoslavia	-	-	227.7	224.8	-	-	-	452.5
Bosnia and Herzegovina	34 042.3	-	-	112.1	-	-	-	34 154.4
Subtotal	**83 291.0**	**-**	**5 522.3**	**528.0**	**37 359.5**	**679.0**	**-**	**127 379.8**
Total	**99 215.6**	**729.4**	**5 653.4**	**528.0**	**37 503.5**	**679.0**	**60.9**	**144 369.8**

[a] Includes expenditures incurred by the United Nations in more than one Member State.

7. The General Assembly, in its resolution 51/12 of 4 November 1996 on the financing of the United Nations Protection Force, the United Nations Confidence Restoration Operation in Croatia, the United Nations Preventive Deployment Force and the United Nations Peace Forces headquarters, reaffirmed that the costs of the combined Forces are expenses of the Organization to be borne by Member States in accordance with Article 17, paragraph 2, of the Charter of the United Nations. The General Assembly also reminded all Member States that are host to a United Nations peacekeeping mission of their obligation to comply fully with the terms of the status-of-forces agreements. The United Nations has, nevertheless, paid substantial amounts for property rental charges and for various dues, tolls, charges

and taxes from which it should have been exempt to several host countries. For the period covered in the present report, a total of US$ 144,370,000 has been incurred by the Organization as the result of non-compliance with status-of-forces or other agreements. Of this amount, payments exacted by the Republic of Croatia, the former Yugoslav Republic of Macedonia, Bosnia and Herzegovina and the Federal Republic of Yugoslavia comprise 88 per cent of the total. The United Nations made such payments under protest for reasons of practical necessity and has, on several occasions, requested the respective Governments to reimburse the Organization for the full amount of expenditures incurred. Three notes verbales have been sent to the respective permanent missions requesting them to effect reimbursement without any reaction having been received. Rental accommodation expenditures, airport charges and petroleum taxes paid by the United Nations Peace Forces headquarters (the combined Forces) to the Republic of Croatia absorb 73 per cent of the total of UNPF payments.

8. Data received from peacekeeping missions covering the period in question indicate that cases of non-compliance with status-of-forces or other agreements mostly comprise rental of premises, charges for transportation access to ports, airports, roads, and taxes, including on petroleum and communications. The majority of violations are related to rental of office space and accommodation, reaching 69 per cent of the total expenditures reported for the 1993 to 2001 period, or 94 per cent of the total with the exclusion of the combined Forces. As host countries shall provide without cost to United Nations peacekeeping operations, in agreement with the Secretary-General's Special Representative, areas for headquarters, camps and other premises as may be required, in cases where such premises are not available, their obligation is to assist peacekeeping missions in obtaining the most favourable rates and terms and conditions under commercial lease agreements and to effect reimbursement to the Organization for such incurred costs.

9. The Organization has also been levied value-added taxes in several peacekeeping missions by a number of host Governments, which in all the reported cases have become a point of contention between the Secretariat and the host country. The Office of Legal Affairs, making reference to Article II, Section 8, of the Convention on Privileges and Immunities of the United Nations, has on various occasions issued legal opinions on the payment and remission of indirect taxes, as follows:

> "While Section 8 does not provide for an explicit exemption from such taxes, it does oblige Member States to make the necessary administrative arrangements to remit or return any amount of tax charged on important purchases of goods and services. The question whether particular purchases are 'important' within the meaning of Section 8 is usually determined by reference either to purchases made on recurring basis or to purchases that involve considerable quantities of goods, commodities or materials. As substantial purchases are usually made by peacekeeping operations in a host country, status-of-forces agreements contain specific provisions exempting the United Nations from taxes charged on goods and services including general sales tax. This is consistent with paragraph 20 of the model status-of-forces agreement (A/45/594, annex), which provides:

'The Government shall exempt the United Nations peacekeeping operation from general sales taxes in respect of all official local purchases.' "

The Secretariat is of the opinion that indirect taxes, for example, value-added tax, levied on important purchases made by a peacekeeping mission should be refunded and, until such time as that is done, the host country is considered to be in violation of the status-of-forces agreement/status-of-mission agreement.

10. There exist other instances that do not qualify as cases of non-compliance with status-of-forces or other agreements as such, since financial liabilities are not incurred by the Organization, but which may seriously hamper the smooth and timely operations of a peacekeeping mission. Obtaining sale and import permits, registration documents and visas can be a time-consuming and cumbersome task and can affect the timeliness in which assets, including personnel, are moved to and within the mission area.

11. As mentioned in paragraph 7, the Secretariat has undertaken efforts to obtain reimbursement from countries hosting peacekeeping operations for costs incurred owing to violations of status-of-forces or other agreements. In this connection, it should be noted that those cases for which the Organization has received restitution have not been included in the compendium. Furthermore, instances of non-compliance are regularly followed up by the peacekeeping missions with the relevant authorities in the host countries, as well as by the Secretariat with the respective permanent missions of Member States in New York. The information included in the present report covers cases in which the Secretariat has engaged in regular dialogue with the respective host countries, but has not received reimbursement.

IV. Action to be taken by the General Assembly

12. **The action to be taken by the General Assembly at its fifty-sixth session on the instances for which the United Nations is entitled to restitution as the result of non-compliance with status-of-forces or other agreements is to take note of the information contained in the present report and endorse the efforts made by the Secretariat and by peacekeeping missions to obtain reimbursement of the amounts paid by the United Nations.**